

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

KENT R. DILLARD

Plaintiff,

v.

PIERCE COUNTY, et al.,

Defendants.

CASE NO. C10-5581BHS

ORDER DECLINING TO
ADOPT REPORT AND
RECOMMENDATION

This matter comes before the Court on the Report and Recommendation of the Honorable Karen L. Strombom, United States Magistrate Judge (Dkt. 8). The Court has considered the Report and Recommendation and the remaining record and hereby declines to adopt the Report and Recommendation (Dkt. 8) and re-refers this action to the Magistrate Judge for consideration of Plaintiff Kent R. Dillard ("Dillard's") proposed second amended complaint for the reasons stated herein.

On September 9, 2010, Dillard filed his original complaint alleging violations of his constitutional rights under 42 U.S.C. § 1983 based on monitoring and/or recording of his telephone calls while he was in custody at the Pierce County Jail. Dkt. 5. On September 10, 2010, the Magistrate Judge issued an order to amend or show cause why the complaint should not be dismissed for failure to state a claim under § 1983. Dkt. 6. On October 4, 2010, Dillard filed a proposed amended complaint in response to the Magistrate Judge's order. Dkt. 7. On November 4, 2010, the Magistrate Judge issued the Report and

1 Recommendation that Dillard's complaint should be dismissed for failure to state a
2 cognizable claim under § 1983 as his amended complaint failed to cure the deficiencies
3 present in his original complaint. Dkt. 8. On December 23, 2010, Dillard filed objections to
4 the Report and Recommendation and a proposed second amended complaint. Dkt. 12. The
5 Court notes that Dillard also filed a motion for extension of time (Dkt. 11) as his objections
6 were filed three days late, which the Court grants to the extent that it is considering his
7 objections.

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9 Although the Court agrees with the Magistrate Judge's findings in the Report and
10 Recommendation in considering Dillard's proposed first amended complaint, Dillard's
11 proposed second amended complaint, which was filed after the Report and Recommendation
12 was issued, may sufficiently address the deficiencies present in his original complaint.
13 Specifically, Dillard makes an attempt at further identifying specific actions taken by
14 individual Defendants that he alleges violated his constitutional rights and cites to a Pierce
15 County Ordinance involving the monitoring and/or recording of telephone calls at the Pierce
16 County Jail. *See* Dkt. 12-1. Although Dillard's proposed second amended complaint was
17 not timely filed, the Court concludes that because of Dillard's pro se status such complaint
18 should be considered by the Magistrate Judge in response to the September 9, 2010 order to
19 amend or show cause. Accordingly, the Court declines to adopt the Report and
20 Recommendation and re-refers this action to the Magistrate Judge for consideration of
21 Dillard's proposed second amended complaint.


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23 Therefore, the Court hereby **ORDERS** as follows:

24 (1) Dillard's motion for extension of time (Dkt. 11) is **GRANTED**;

25 (2) The Court **DECLINES TO ADOPT** the Report and Recommendation (Dkt.
26 8); and

1 (3) This action is **RE-REFERRED** to the Magistrate Judge for consideration of
2 Dillard's proposed second amended complaint (Dkt. 12-1).

3 DATED this 10th day of February, 2011.

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6 BENJAMIN H. SETTLE
7 United States District Judge
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